

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL AND LUFKIN DIVISION

ORDER

Before the court is Defendant CIBA Vision Corporation's Objections to Memorandum and Order Construing Claim Terms of United States Patent Nos. 6,431,706; 6,923,538; 6,467,903; 6,857,740; 6,971,746; 7,133,174; and 7,134,753 [Doc. # 141 in 2:06cv149 and Doc. #73 in 9:06cv149].¹ Defendant asks this court to reconsider certain portions of Magistrate Judge Earl Hine's order signed July 16, 2007. *See* Doc. # 129 in 2:06cv149 and Doc. #71 in 9:06cv149. This is a ruling on a non-dispositive matter. *See* 28 U.S.C. § 636.

Under 28 U.S.C. § 636(b)(1)(A), a district judge may reconsider a magistrate judge's ruling on any non-dispositive matter "where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law."

Claim construction is a matter of law. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 116 S. Ct. 1384 (1996) (“*Markman II*”). “The duty of the trial judge is to determine the meaning of the claims at issue, and to instruct the jury accordingly.” *Exxon Chem. Patents, Inc. v. Lubrizol Corp.*, 64 F.3d 1553, 1555 (Fed. Cir. 1995) (citations omitted).

¹Although the objections were filed as a notice, the court will treat it as a motion.

Judge Hines recited the correct standard and made specific findings on each of the claim terms at issue in a detailed thirty-three (33) page order. CIBA agrees that Judge Hines reached the constructions “after careful consideration of the parties’ respective positions.” CIBA simply disagrees with the conclusions reached by Judge Hines. After reviewing his findings, under the circumstances of this case, the court cannot conclude that Judge Hine’s decision was clearly erroneous or contrary to law.

IT IS THEREFORE ORDERED that Defendant CIBA Vision Corporation’s Objections to Memorandum and Order Construing Claim Terms of United States Patent Nos. 6,431,706; 6,923,538; 6,467,903; 6,857,740; 6,971,746; 7,133,174; and 7,134,753 [Doc. # 141] is **DENIED**.

So **ORDERED** and **SIGNED** this **21** day of **August, 2007**.



Ron Clark
Ron Clark, United States District Judge